

## **BOARD OF ADJUSTMENT MEETING**

Tuesday, November 18, 2014 5:00 p.m.  
Community Recreation Center  
10640 N Clubhouse Drive, Cedar Hills, Utah

Present: Priscilla Leek, Chair  
Board Members: Randy Gehring, Charelle Hagen, Jeff Lindstrom  
Absent/Excused: Darin Lowder  
David Bunker, City Manager  
Chandler Goodwin, Assistant City Manager/City Planner  
Colleen Mulvey, City Recorder  
Others: Ben Oyler, Kurstin Oyler

1. This meeting of the Board of Adjustment of the City of Cedar Hills, having been properly noticed, was called to order by Chairperson Leek at 5:02 p.m.

### **SCHEDULED ITEM**

2. Presentation by Applicant: Ben and Kurstin Oyler, who are requesting a variance from City Code Title 10, Chapter 4, Article F, RR-1-20,000 Rural Residential Zone, to combine and develop properties located at 3619 & 3649 West 9220 North

Ben Oyler stated that they desire to stay in Cedar Hills and are looking to build on a larger property than they currently own. In 2012 they approached the Johnson and the Stephens family about purchasing parts of the property that they have. The Johnsons property has a remnant piece that they are willing to sell, and the Stephens have part of their property that sits vacant. They would like to purchase and combine these two vacant pieces and build a new house. Mr. Oyler said that in discussing this with the city, Chandler Goodwin said that it would be more likely for an approval if the lot size was a half-acre because that is what this area is zoned for. They then approached the Clingo family who own property behind the Johnsons and Stevens to try to work out something that would allow them to be willing to sell some of their property so that they could achieve getting a half-acre. Mr. Clingo was not interested in selling. Mr. Oyler stated that they are here to ask for the opportunity to get the variance to create this 1/3 acre lot by combining the two pieces from the Johnsons and Stephens property. He said that they feel like this variance is something that makes sense, that property is not being used, putting a house there would make the street look nicer, and bring taxes to the city.

3. Presentation by Staff

Chandler Goodwin stated that the issue with this is that this property is in the RR-1-20,000 Rural Residential Zone, the City Code Section 10-4-f-4, lists the lot area and requirements for a single family dwelling to be a minimum area of twenty thousand square feet. This proposal does not meet that requirement and that is why this item did not move on to the Planning Commission. In researching this we found that for Mahogany Acres Plat A Lots 1 & 2, the Sadler and Johnson properties were recorded in 1976, and were annexed into the city in 1977 when Cedar Hills was incorporated. The RR-1-20,000 Zone was created in 1983, so these properties were grandfathered in. The Stephens property, Mahogany Acres Plat B is .54 acres, 23,716 square feet

and meets the requirement of the zone. Mr. Goodwin pointed out that the plat maps are confusing to read and show the Johnson property defined on two different plats, and in 1989 there was a Warranty Deed recorded at the county to correct an error in the legal description, the deed shows that the city conveyed that 60 foot remnant piece to the Johnsons. Mr. Goodwin stated the Johnson property is .49 acres, the Stephens property is .54 acres and the problem with the Oyler's proposal is that it takes parts of two lots and divides those two lots into three non-conforming lots for the zone.

#### 4. Public Comment

No comments.

#### 5. Discussion by Board of Adjustment

Board Member Hagen asked about the lot size for the Saddlers and the other lots across the street. Mr. Goodwin stated that the Saddlers is .35 acres and across the street the lot sizes vary but were all recorded prior to the creation of the RR-1-20,000 Zone, so they are all grandfathered in.

Board Member Lindstrom asked that if this variance gets approved how we would deal with it, would a new subdivision be created. Mr. Goodwin stated that there would have to be a new subdivision created, Plat C showing the amended changes to A and B, and at that point there would have to be public hearings with the Planning Commission and the City Council. Mr. Goodwin pointed out that if this were approved the new subdivision would be a non-conforming subdivision.

Board Member Lindstrom asked if you change a subdivision wouldn't you need the written approval of every member of that subdivision. David Bunker stated that you would need the approval of the lots affected, if there was a Home Owners Association (HOA) or a subdivision agreement then each member would have to approve.

Chairperson Leek asked to clarify that they are requesting only the remnant piece and nothing else of the Johnson property. Mr. Oyler said that that was correct and that the Johnson property would not be part of the new subdivision, it would be the Stephens property and the new lot.

Board Member Hagen asked who shoulders the cost of this, such as the surveyor, recording at the county, etc. Mr. Oyler stated that they have already hired and paid for a surveyor.

Chairperson Leek asked why the parties who have agreed to this are not here or why is there not something signed from them to show that they are content with this. She stated that it would be helpful to have specific verification from the people whose property is involved here. Board Member Lindstrom commented that we could put that as a condition of approval.

Chairperson Leek stated that they would now review the conditions that must be met in order to grant a variance. #1) Would granting the variance change the intended use of the property?

Board Member Lindstrom stated that it depends on how you define the word "use."

Board Member Gehring stated that he does not think the variance would change it.

Chairperson Leek read condition #2) Are there special circumstances attached to the property that do not generally apply to other properties in the same district? She said that she does not think that there is anything particularly unusual about this property other than the remnant lot.

Board Member Lindstrom said that the fact of the remnant would make it unique and unlike others in the area.

Chairperson Leek asked to clarify that the remnant lot is legally non-conforming at this time. Mr. Goodwin stated that the remnant piece by itself is non-conforming; you cannot put anything on it.

Chairperson Leek read condition #3) Do those circumstances in (2) cause an unreasonable hardship on the applicant, denying use of the property, that others in the same district enjoy or the he/she has a right to expect? She stated that she is not sure that this applies to the Oyler's because they do not own the property. She pointed out that the hardship cannot be self-imposed, and this is difficult because this is something that is not being caused by the property itself, it is just the desire to have this property change.

Board Member Lindstrom stated that normally when we review things they are very technical and specific in nature and can be answered with a "yes" or "no" answer. He said that when he looks at this area of town he looks at what the legislative intent was in creating these zones. In looking at this we are taking half-acre lots and turning them into 1/3 acre lots and that is something that we never do. He stated that when he looks at this neighborhood where everyone across the road have 1/3 acre lots or little over 1/3 acre, in the spirit of the zone he thinks that this does not detract from it.

Chairperson Leek read condition #4) Is the variance essential to a substantial property right? If the applicant can accomplish their needs without a variance, you may not grant a variance. She said that obviously they cannot build a house without the variance.

Chairperson Leek read #5) Will granting a variance substantially affect the goals of the general plan or be contrary to the public interest? And #6) Is the "spirit" of the zoning ordinance observed and is the Board being fair to all involved? She said that she is not certain what kind of house the Oyler's plan to build without moving a substantial amount of earth because it is not a flat lot. She said that she is less concerned by the taking of the remnant piece, and more concerned that this does move it from conforming to non-conforming. She said that she does not believe that this is a hardship. She stated that she would vote against granting the variance.

Board Member Hagen said that in looking over what was presented in the paperwork, she would be more inclined to vote against it. She said that after she went and looked at the area, she could see how it would be workable. She added that she has a hard time giving permission after the fact if the true intent of the zoning wasn't meant for this to happen. She stated that she would like to hear from the property owners.

Chairperson Leek stated that in the past all of the situations that we have heard have been from the property owners involved. Mr. Goodwin commented that this is an atypical situation in that the applicant is not the property owner.

Chairperson Leek stated that the thing that she is concerned with is changing that other lot to a non-conforming. If the Board of Adjustment grants a variance we have now set a precedence, and by setting a precedence for this situation it opens the door for someone else who wants to have a non-conforming lot. She stated that we have to be very careful about that. Mr. Oyler commented that there is only one lot in that area that is conforming and although grandfathered in, the other lots in the area are under a half-acre and non-conforming.

Board Member Hagen said that she thinks this situation would be different if the Stephens were here petitioning to have their lot become a non-conforming lot. It would be the property owner asking to change his rights.

Mr. Oyler said that his understanding is that if a variance is granted it doesn't mean that anything is going to happen, you would then have to go through the process with public hearings, etc. Chairperson Leek stated that if we grant this variance it means exactly what you are asking for. Mr. Goodwin said that if the variance is granted then you would go to the Planning Commission for review.

Board Member Lindstrom stated that when he visualizes a house on that property it doesn't look out of place and looks similar to the surrounding properties, but that is not reason enough to grant the variance. He said that a lot of the precedence the Board sets goes into specific zones that are very static with not a lot of room for leeway. In this area the lots are all different sizes.

Mr. Bunker stated that one of the things to consider is the history of this area, Plat A was a county subdivision and when it was boundary adjusted into Cedar Hills the city took it as is, so there are lots in that area that are less than a half-acre. He said that when Plat B (which is a city plat) came in, every lot was conforming including the Stephens. There are only three lots in Plat B, and the city intentionally stayed with the half-acre lots. Mr. Goodwin stated to correct what he said earlier about Plat B, it was adopted in 1990, not 1980, so it was adopted after the RR-1-20,000 Zone was created. Mr. Bunker added that those lots in Plat B were made specifically to meet the zone; if there were a variance from that it would be difficult to justify changing a lot that was approved per the zone. Mr. Bunker stated that the issue is meeting the criteria for a variance because this is a quasi-judicial body that has the authority to do that, but they do set precedence.

Board Member Gehring stated that if by granting the variance it is going to make them non-compliant but compliant with the rest of the neighborhood, he does not have a problem with it.

## 6. Action on Findings

**MOTION: Board Member Lindstrom – To approve granting a variance to the Oyler’s contingent on written agreement with the affected property owners, the Stephens, the Johnsons and the Clingos.** Seconded by Board Member Gehring.

Yes	-	Board Member Lindstrom
		Board Member Gehring
No	-	Chairperson Leek
		Board Member Hagen

Motion does not pass.

Board Member Hagen stated that she is okay with the house being built there but that she feels that we are going about this backwards by not granting the variance to the property owners, the Stephens.

Chairperson Leek stated that she feels that this is not a hardship because this is something they have created themselves, and that is a key element. Also the fact that it takes something that is conforming and intentionally makes it non-conforming. She stated that all of the conditions must be met; she does not believe that all of them have been met.

Mr. Goodwin pointed out that the variance can only be granted if all conditions are met, if there is going to be a variance granted there needs to be a finding of fact made by this board stating why that decision was made. He added that we have other remnant lots throughout the city and we do not want to set a precedence that we can subdivide any remnant lot. He said that we need to be careful at how we go about this and look at those conditions to make sure all are met.

Chairperson Leek then reviewed the conditions with the Board. The following answers were concluded: #1) No, #2) Yes, #3) No, #4) No, #5) No, #6) Yes.

Board Member Hagen asked about who would incur the costs for this. Mr. Goodwin said that the cost goes to the developer, there are impact fees, utility fees, recording fees, etc.

Board Member Gehring asked if we should be concerned with what the surrounding neighbors think about seeing the variance granted and finish off this neighborhood. Chairperson Leek said that she doesn’t think that it is advisable to have neighbors approve other neighbors. Board Member Lindstrom stated that in the past we have not looked for neighbor approval because property owners sell and come and go, but we give credence to what they disapprove and that is the purpose of a public hearing. Chairperson Leek added that we are concerned about people’s opinion if their property is directly affected.

Chairperson Leek asked if anyone wanted to make a motion. Board Member Lindstrom said that he would make the same motion.

**MOTION: Board Member Lindstrom – To approve granting a variance to the Oyler’s contingent on written agreement with the affected property owners, the Stephens, the Johnsons and the Clingos.**

Motion not seconded.

Board Member Hagen stated that she has a problem with the motion. She said that she feels she could only approve a motion that is granted to the Stephens, and not to people who do not own the land.

Mr. Bunker said that in order to pass this all the criteria has to be met, the criteria has to be broken down and the finding of fact to be written because this decision runs with the land, not with the property owner.

**MOTION: Chairperson Leek – To deny the variance because it does not meet all the criteria as listed in what the law requires for a variance.** Seconded by Board Member Hagen.

Yes	-	Chairperson Leek
		Board Member Hagen
No	-	Board Member Lindstrom
		Board Member Gehring

Motion does not pass.

Chairperson Leek stated that because we have deadlocked we cannot make that decision and grant the variance.

Board Member Lindstrom suggested having this item heard again when the full Board is present to avoid having a deadlock.

Mr. Goodwin stated that in reviewing this he now thinks that it is solely the Stephens lot that needs the variance, if you accept the fact that the Johnsons lot is a grandfathered in, non-conforming lot, you take it out of the equation. The only piece of land that needs the variance is the Stephens' land.

Chairperson Leek asked to clarify what should be done, does there have to be a second application. Mr. Goodwin said that he would prefer them to submit a new application, and we would waive the fee.

The general consensus of the Board was to recommend having the Stephens submit a new application for a variance on their property. Upon receipt of the application they would work together to schedule meeting in the near future with the entire Board in attendance.

#### 7. Adjourn

This meeting was adjourned at 6:25 p.m. on a motion by Board Member Hagen, seconded by Board Member Gehring and unanimously approved.

Approved:  
February 18, 2015

/s/ Colleen A. Mulvey, MMC  
City Recorder